

# Recent Developments in Arizona's Public Records Law

Insert for May 2008 Public Records Law Booklet

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## Statutes

A.R.S. § 39-128 added by Laws 2008, Ch. 277, § 1:

- Requires a public body to maintain all records that are reasonably necessary or appropriate to maintain an accurate knowledge of disciplinary actions, including employee responses to all disciplinary actions, involving public officers or employees of the public body.
- Stipulates that the records shall be open to inspection and copying, unless inspection or disclosure is specifically prohibited pursuant to statute.
- Clarifies that the personal identifying information of any eligible person pursuant to A.R.S. §§ 39-123 and -124 (mainly law enforcement and other eligible persons) is still protected from disclosure pursuant to law.

## Case law

*David Lake v. City of Phoenix*, --- P.3d ----, 2009 WL 3461304, Ariz., October 29, 2009 (NO. CV-09-0036-PR)

- Arizona Supreme Court held that if a public entity maintains a public record in an electronic format, then the electronic version, including any embedded metadata, is subject to disclosure under our public records laws.

*Arpaio v. Davis*, 221 Ariz. 116, 210 P.3d 1287 (Ariz. App. Div. 1, 2009)

- Arizona Supreme Court Rule 123 controls requests for judicial records.
- Court held that trial judge did not abuse his discretion in finding that review would require unreasonable expenditure of resources and time. *See* Rule 123(f)(4)(A)(i) and (ii).

*David Lake v. City of Phoenix*, 220 Ariz. 472, 207 P.3d 725 (Ariz. App. Div. 1, 2009) (*vacated in part and remanded*)

Arizona Court of Appeals held the following:

- Metadata is not a public record (*vacated*);
- Police reports stored in a municipality's records management system that is linked to restricted databases of state and national criminal justice agencies are subject to disclosure as public records;
- Responsive e-mails of a former city employee in the possession of the city at the time of the request were subject to disclosure as public records; and
- Unfinished police reports are subject to disclosure as public records absent any argument that the records should have been protected from production because of concerns regarding confidentiality, privacy, or the best interests of the state.

*Arpaio v. Citizens Publishing Co.*, 211 P.3d 8, 2008 WL 5340884 (Ariz. App. Div. 2, 2008)

- Pima County Attorney filed declaratory relief action against *Citizen* and Arpaio, after Arpaio objected to PCAO's release of public records to *Citizen*.
- *Citizen* sought correspondence between PCAO and Arpaio's office concerning transfer of forfeiture case from Attorney General's Office to PCAO.
- Trial court found that Arpaio's privilege claims lacked merit, ordered disclosure, and awarded \$25,241 in fees to *Citizen* as the substantially prevailing party.
- Appellate court affirmed, rejected Arpaio's argument that fees could only be assessed against the "custodian," and granted *Citizen*'s request for fees on appeal.